

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: June 05, 2017

+ **CRL.A. 365/2016**

RISHIPAL

..... Appellant

Through: Mr. Amar Nath, Amicus Curiae
counsel with Mr. S.K. Sethi
DHCLSC Panel Advocate

versus

STATE

..... Respondent

Through: Mr. Kamal Kumar Ghei,
Additional Public Prosecutor for
respondent-State with SI Shri
Bhagwan

**CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR**

**JUDGMENT
(ORAL)**

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1. Upon finding that appellant had raped the prosecutrix aged 10 years, he has been convicted by trial court for the offence under Section 376 (2) of IPC vide impugned judgment of 21st December, 2015 and vide impugned order on sentence of 22nd December, 2015, he has been sentenced to rigorous imprisonment for ten years with fine of ₹50,000/- with default clause. The facts as noted in the impugned judgment are that on the statement of prosecutrix's mother (PW-2), FIR of this case was registered as she had disclosed to the police that on 26th February, 2011

on returning home at 10.00 P.M., she had seen that her daughter i.e. the prosecutrix, was lying unconscious in the house and her undergarment was soaked with her blood and she had immediately taken prosecutrix to the hospital, where upon regaining her senses, the prosecutrix had disclosed that in the evening of 26th February, 2011 when she was playing with her friends in the house of Kavita, she was stopped by appellant-accused on the pretext of bringing some articles and appellant-accused had given her ₹10/- and had asked her to bring biscuits and on the pretext of showing her television, he had taken her inside the room, where he had forcibly removed her clothes and had raped her under the threat to kill her.

2. Apart from evidence of prosecutrix (PW-1), there is deposition of her mother (PW-2) and of the concerned Doctors (PW-3 & PW-5) as well as deposition of one Devi Ram (PW-4), who is the owner of the house where the prosecutrix with her family was residing as tenants. The School Principal (PW-6) had deposed about the age of the prosecutrix and apart from evidence of Investigating Officer (PW-11), there is deposition of other police officials.

3. The stand of appellant before trial court was of denial and he had chosen to lead evidence in his defence, but ultimately he had not led any evidence in his defence.

4. On the strength of the evidence led, appellant stands convicted and sentenced as noted hereinabove. Appellant' counsel volunteers to argue this appeal. Learned counsel for appellant contends that in his statement under Section 313 of Cr.P.C., appellant had specifically maintained that

at the time of alleged incident, he was at his house with his family and so, there is no question of his committing the crime in question. It is pointed out by learned counsel for appellant that the evidence of prosecutrix (PW-1) is discrepant inasmuch as prosecutrix in her statement under Section 164 of Cr.P.C. had stated that she knew appellant as he was the father of her friend-Kavita, whereas in her evidence, she has stated that she does not know appellant. It is also pointed out that prosecutrix (PW-1) in her evidence has denied of having made any statement to police by taking a stand that she was unconscious at that time.

5. Learned counsel for appellant submits that the friends of prosecutrix i.e. *Kavita and Praveen* ought to have been got examined by the prosecution to provide corroboration to the statement of prosecutrix, which has not been done and so, the evidence of prosecutrix ought not to be relied upon and benefit of doubt deserves to be extended to appellant as the version put forth by mother of prosecutrix does not inspire confidence. To submit so, it is pointed out that mother of prosecutrix used to sell eggs outside her house and it is highly unlikely that she would not get to know about this incident as she was quite near the place of incident.

6. Learned counsel for appellant draws the attention of this Court to the evidence of *Dr. Rashmi (PW-3)* to point out that she has clearly stated in the MLC of prosecutrix that the injury of prosecutrix was due to fall and this evidence of *Dr. Rashmi Ahuja (PW-3)* demolishes prosecution case. It is submitted that the Doctor, who had administered anesthesia to prosecutrix, has not been got examined. It is further submitted that *Dr.*

Rashmi (PW-3) has admitted in her cross-examination that she did not find any abrasion or bruises on the body of the prosecutrix and this by itself, falsifies the prosecution case of prosecutrix being forcibly raped. Lastly, it is submitted that a lenient view be taken as appellant is aged 50 years and has three children and a wife to support and that he is in custody for more than six years and so, his sentence deserves to be reduced to the period already undergone by him in view of the *Proviso* to Sub-section 2 of Section 376 of IPC.

7. On the contrary, learned Additional Public Prosecutor for respondent-State supports impugned judgment and submits that these so-called discrepancies pointed out by appellant's counsel do not go to the root of the matter to justify the acquittal of appellant.

8. Upon hearing and on perusal of impugned judgment and evidence on record, I find that self-serving statement of appellant that he was at his house with his family at the time of this incident would not absolve him of the commission of heinous offence in question for the reason that no self-respecting lady would stake the honour of her minor girl child to falsely implicate anyone. It is not the case of appellant that he has been falsely implicated by prosecutrix's mother and so, in such a case there was no requirement of getting prosecutrix's friends examined in evidence. Merely because prosecutrix has stated in her evidence that she does not know appellant-accused, would not be of any consequence for the reason that appellant had taken advantage of prosecutrix, who was his daughter's friend. The version of prosecutrix and that of her mother inspires confidence and persuades this Court to maintain the conviction of

appellant. It is relevant to note that mother of prosecutrix has not been cross examined as to why she could not know about this incident, when she was around the place of incident. Had the mother of prosecutrix been cross examined on this aspect, then she would have given a plausible answer. In the absence of cross examination of prosecutrix's mother on this aspect, no benefit accrues to appellant.

9. It is pertinent to note that there is no cross examination of prosecutrix's mother by appellant to elicit as to why she had disclosed to the doctor that prosecutrix had suffered injuries due to a fall. Otherwise also, judicial notice can be taken of the fact that in such like cases, to obtain timely medical aid, such like excuses are given at the time of medical examination. It is relevant to note that in the instant case, prosecutrix was bleeding from her private parts and so in such a situation, the effort of her mother is to save the child and perhaps for this reason, she had told the doctor that prosecutrix had suffered the injuries by a fall. In any case, no benefit accrues to the appellant-accused on account of such an innocuous omission. During the course of hearing, it was submitted by appellant's counsel that a lenient view be taken as appellant is aged 50 years and has a family to support and so, the benefit of proviso to Sub-Section 2 of Section 376 of IPC be extended to the appellant.

10. In the considered opinion of this Court, no exceptional circumstances are made out to justify imposition of lesser sentence than the minimum provided for heinous offences like the instant one. The minimum sentence has been already awarded to appellant. Infact, a deterrent punishment ought to have been awarded to him. In any case,

respondent-State is not in appeal, therefore, this Court refrains from commenting any further on this aspect.

11. Consequentially, finding no substance in this appeal, it is dismissed while maintaining the conviction and sentence awarded to the appellant.

(SUNIL GAUR)
JUDGE

JUNE 05, 2017
s/vn

